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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 ANDREW MARK SALAZAR,

11 Petitioner,

12 v.

13 UNITED STATES OF AMERICA,

14 Respondent.

CASE NO. C17-1770JLR

ORDER CONSTRUING  
PLEADING AS A MOTION TO  
RECUSE, DENYING THE  
MOTION, AND REFERRING  
THE MOTION TO THE CHIEF  
JUDGE

15 **I. INTRODUCTION**

16 Before the court is pro se Petitioner Andrew Mark Salazar's motion to set aside,  
17 vacate, or correct his sentence pursuant to 28 U.S.C. § 2255. (Mot. (Dkt. # 1).) In the  
18 course of his motion, Petitioner states that he "questions whether [his] excessive sentence  
19 was the intent of Congress and whether the trial judge is impartial and unbiased [sic], when  
20 rendering a decision so obviously favorable to the Government." (*Id.* at 4.) The court  
21 liberally construes this statement as a motion to recuse. The court has considered the  
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1 motion to recuse and denies it for the reasons set forth below. The court further directs  
2 the Clerk to refer the motion to Chief Judge Ricardo S. Martinez for further review.

## 3 II. BACKGROUND & ANALYSIS

4 On April 13, 2015, Petitioner entered into a plea agreement in which he pleaded  
5 guilty to (1) possession of visual depictions of minors engaged in sexually explicit  
6 conduct in violation of 18 U.S.C. §§ 2252(a)(4)(B) and 2252(b)(2), and (2) receipt of  
7 visual depictions of minors engaged in sexually explicit conduct in violation of 18 U.S.C.  
8 §§ 2252(a)(2) and (b)(1). (*See United States v. Salazar*, No. CR14-0275JLR (W.D.  
9 Wash.), Plea Agreement (Dkt. # 45) ¶¶ 1.a, 1.b.) On August 3, 2015, the court sentenced  
10 Petitioner to 238 months of incarceration on both counts to run concurrently. (*Id.*, Min.  
11 Entry (Dkt. # 58); Judgment (Dkt. # 59).) On November 11, 2017, Petitioner filed his  
12 present motion to set aside, vacate, or correct his sentence pursuant to 28 U.S.C.  
13 § 2255—a portion of which the court liberally construes as a motion to recuse. (*See Mot.*  
14 *at 4.*)

15 Under the Local Civil Rules for the Western District of Washington, “[w]henver  
16 a motion to recuse directed at a judge of this court is filed pursuant to 28 U.S.C. § 144 or  
17 28 U.S.C. § 455, the challenged judge will review the motion papers and decide whether  
18 to recuse voluntarily.” Local Rules W.D. Wash. LCR 3(f). “If the challenged judge  
19 decides not to voluntarily recuse, he or she will direct the clerk to refer the motion to the  
20 chief judge, or the chief judge’s designee.” *Id.*

21 “The substantive standard for recusal under 28 U.S.C. § 144 and 28 U.S.C. § 455  
22 is the same: Whether a reasonable person with knowledge of all the facts would

1 conclude that the judge’s impartiality might reasonably be questioned.” *United States v.*  
2 *McTiernan*, 695 F.3d 882, 891 (9th Cir. 2012) (internal quotation marks omitted). Other  
3 than stating that he “questions” whether the judge is “impartial and unbiased,”  
4 Petitioner identifies no basis for recusal. (See Mot. at 4.) Specifically, he does not allege  
5 facts to support the contention that the undersigned judge is presiding over a case in  
6 which his “impartiality might reasonably be questioned,” *McTiernan*, 695 F.3d at 891;  
7 see also 28 U.S.C. § 455(a), “has a personal bias or prejudice concerning a party, or  
8 personal knowledge of disputed evidentiary facts concerning the proceeding,” *id.*  
9 § 455(b)(1); see also *id.* § 144, served as a lawyer in this controversy while in private  
10 practice, *id.* § 455(b)(2), or has a financial interest in this litigation, *id.* § 455(b)(3)-(4).  
11 In addition, the court cannot independently conceive of a basis for recusal. For these  
12 reasons, the court denies Petitioner’s recusal motion and directs the Clerk to refer this  
13 order and Petitioner’s motion to Chief Judge Ricardo S. Martinez.

### 14 III. CONCLUSION

15 For the reasons set forth above, the court DENIES Petitioner’s motion to recuse,  
16 which is contained on page 4 of his motion to set aside, vacate, or correct his sentence

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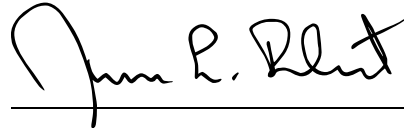
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1 pursuant to 28 U.S.C. § 2255 (Dkt. #1) and DIRECTS the Clerk to refer this order and  
2 the motion to Chief Judge Ricardo S. Martinez for further review.

3 Dated this 18th day of December, 2017.

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6 JAMES L. ROBART  
7 United States District Judge  
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